

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Abigail Shuster	Team: Squad #15	CCRB Case #: 201506660	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 05/06/2015 3:50 PM	Location of Incident: Park Avenue and East 125th Street	Precinct: 25	18 Mo. SOL 11/6/2016	EO SOL 11/6/2016	
Date/Time CV Reported Tue, 08/11/2015 11:05 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 08/11/2015 11:05 AM		

  

Complainant/Victim	Type	Home Address

  

Witness(es)	Home Address

  

Subject Officer(s)	Shield	TaxID	Command
1. POM Kappa Farid	24995	925259	025 PCT

  

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. LT Scott Orenstein	00000	939150	025 PCT
2. POM Jason Brochhausen	18783	948695	025 PCT
3. POM Marco Dutan	21080	936535	SOD SRG

  

Officer(s)	Allegation	Investigator Recommendation
A.POM Kappa Farid	Abuse: PO Kappa Farid stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Kappa Farid	Force: PO Kappa Farid used pepper spray against § 87(2)(b)	

### Case Summary

§ 87(2)(b) who is § 87(2)(b) s civil attorney, filed this complaint on her behalf on August 11, 2015. § 87(2)(b) alleged that on May 6, 2015, at approximately 3:30pm, PO Kappa Farid of the 25<sup>th</sup> Precinct pulled over her partner, § 87(2)(b) as he drove her and his two young children on East 125<sup>th</sup> Street and Park Avenue in Manhattan (**Allegation A**). After § 87(2)(b) refused to provide his driver's license and refused to exit his vehicle, PO Farid dispensed pepper spray in § 87(2)(b) s face (**Allegation B**). § 87(2)(b) was arrested for § 87(2)(b).

### Meditation, Criminal and Civil Histories

- Because § 87(2)(b) intended to file a lawsuit regarding the incident, and indeed the complaint was filed by her attorney, this case was deemed ineligible for mediation.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- Because § 87(2)(b) was not arrested during this incident, a New York State Office of Court Administration database search could not be conducted.
- A FOIL request was filed with the Office of the New York City Comptroller on November 9, 2015, to determine whether any notices of claim were filed. The results will be added to the case file upon receipt.

### Civilian and Officer CCRB Histories

- PO Farid, during his 15-year tenure with the NYPD, has been the subject of 17 previous CCRB allegations involving 9 cases, none of which have been force allegations. One substantiated allegation, a refusal to provide name and shield allegation, resulted from case number 200302738. § 87(2)(g)
- This is § 87(2)(b) and § 87(2)(b) s first CCRB complaint (BR 2).
- This is the first CCRB complaint involving § 87(2)(b) (BR 2).

### Findings and Recommendations

#### Explanation of Subject Officer Identification

§ 87(2)(b) the only civilian who provided sworn testimony for this case, identified the officer to pepper spray § 87(2)(b) as a different officer from the officer who pulled them over. She described the subject officer of the pepper spray allegation as a white uniformed male, 5'8" tall, mid 30s, with dark hair. She described the officer who pulled them over as a 5'8" tall uniformed Indian male, averagely built, in his early 50s (BR 3).

PO Farid is a 5'9" tall, 176-pound male who is § 87(2)(b) old. His NYPD photograph lists him as white; he speaks with a slight accent and could reasonably be identified as Indian. Most importantly, PO Farid acknowledged being the officer to both pull over and to pepper spray § 87(2)(b). While § 87(2)(b) reported that these acts were performed by two different officers, she herself noted that her visibility was obscured from her position in the passenger seat. All of the officers interviewed for the case, and all of the police documentation, supports PO Farid's testimony that he was the officer to pull over § 87(2)(b) and the officer to dispense the pepper spray. § 87(2)(g)

#### Allegation A – Abuse of Authority – PO Kappa Farid stopped the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that PO Farid pulled § 87(2)(b) s vehicle over and informed him that he was being stopped for his excessively tinted windows. § 87(2)(b) testified that PO Farid informed § 87(2)(b) as such in their initial conversation, PO Farid testified as such during his

CCRB statement, and PO Dutan testified that PO Farid told him that he was going to pull over § 87(2)(b)'s car due to its tints (BR 3 -5).

PO Marco Dutan, who was PO Farid's partner, did not make the observation regarding the tints himself. Both he and PO Farid testified that there was no reason for stopping the vehicle aside from the tinted windows. Lt. Scott Orenstein, who was called to the scene after § 87(2)(b) refused to provide his license, testified that he did not take note of the tints himself. The absence of his observation, he clarified, was because the situation had escalated far beyond the question of tints and it was therefore not his priority to notice them. PO Jason Brochhausen, who was Lt. Orenstein's driver, did not know why § 87(2)(b) had been pulled over (BR 4 – 7).

§ 87(2)(b) was not cited for the tinted windows violation. § 87(2)(b) was never interviewed for during the course of this investigation at the advice of his criminal attorney, and § 87(2)(b) neither denied nor acknowledged that the windows of § 87(2)(b)'s vehicle were tinted. Moreover, she noted that she and § 87(2)(b) were prepared to be summonsed for the tinted windows but were confused as to why it was necessary for § 87(2)(b) to provide his license in regards (BR 3).

§ 87(2)(g)  
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**Allegation B – Force – PO Kappa Farid used pepper spray against § 87(2)(b)**

It is undisputed that PO Farid dispensed pepper spray against § 87(2)(b) during the vehicle stop. § 87(2)(g)

§ 87(2)(g)  
§ 87(2)(b) The undisputed events are as follows: § 87(2)(b) refused to provide his driver's license to both PO Farid and later to Lt. Orenstein, stating that he is a Moor and that he was not operating a motor vehicle, as the officers suggested, but rather was traveling and therefore did not need to provide a license. An officer (either Lt. Orenstein or PO Farid) then unlocked and opened the driver's side door and asked § 87(2)(b) to step out, which § 87(2)(b) repeatedly refused to do. At such time, Lt. Orenstein and approximately two other officers pulled at § 87(2)(b)'s left arm in an attempt to remove him from the vehicle. During their struggle, PO Farid reached around Lt. Orenstein's right side and dispensed his pepper spray one time into § 87(2)(b)'s face. Lt. Orenstein and the other officers were then able to remove him from the vehicle and place him in handcuffs (BR 3-7).

According to all of the officers, including PO Farid, PO Farid dispensed the pepper spray of his own volition and in absence of any orders from Lt. Orenstein. § 87(2)(g) Lt. Orenstein testified to his surprise to find PO Farid reaching around him to pepper spray § 87(2)(b)

§ 87(2)(g)  
§ 87(2)(b) described § 87(2)(b)

§ 87(2)(b) as trying to “fend off” the officers with his hands; PO Farid testified that § 87(2)(b) used his upper body to thrust at the officers who were trying to remove him from the vehicle; Lt. Orenstein stated that § 87(2)(b) attempted to push the officers away with his hands and he was in compliant in exiting the vehicle. All of the officers interviewed stated either that § 87(2)(b) did not attempt to strike at any officers, or that they did not recall whether he attempted to do so.

It is also undisputed that PO Farid knew that there was at least one child in the vehicle when he pepper sprayed into it. He noted in his interview that there was a child in the car, and Lt. Orenstein testified that he said to § 87(2)(b) (while PO Farid stood directly beside him) something to the effect of, “Why aren’t you complying? You have children in the car!”(BR 7).

§ 87(2)(g) § 87(2)(b) testified that it lasted approximately one minute; Lt. Orenstein testified that it lasted 20-30 seconds; PO Farid testified that it lasted about 3 minutes. PO Dutan could not estimate how much time elapsed, and PO Brochhausen was the only person interviewed who testified that § 87(2)(b) was actually pepper sprayed while standing *outside* of his vehicle, § 87(2)(g)

Finally, PO Farid testified that he sprayed § 87(2)(b) s face from close proximity, approximately one to two inches from his face. None of the other officers were able to estimate the distance between the canister and § 87(2)(b) s body. § 87(2)(b) did not witness the pepper spray canister as it was dispensed, and was therefore unable to approximate the distance.

§ 87(2)(g)

Officers may use pepper spray when they reasonably believe it is necessary to affect an arrest of a resisting suspect, specifically as an alternative to other forms of physical force. Officers are not to use pepper spray on suspects who passively resist, and are to avoid using pepper spray on young children or within small contained areas such as automobiles and closets whenever possible. NYPD Patrol Guide 212-95(BR 8).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) [Redacted]  
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§ 87(2)(g) [Redacted]  
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Squad: 15

Investigator: \_\_\_\_\_  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature Print Date